IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 167 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONEROFINCOMETAX - Appellant(s)

Versus

AVONFLOURSPVT.LTD. - Opponent(s)

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Appearance :
MR MANISH R BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/10/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE D.A.MEHTA)

1 The appellant-revenue has proposed the following question :

> *"Whether the appellant is right in facts and in law in cancelling the penalty levied under Section 271[1][C] of the Act on the ground that the penalty cannot be levied in case of loss ?"*

2 Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the appellant.

3 According to him in light of the decision rendered by Bombay High Court in the case of Commissioner of Income Tax Vs. Chemiequip Ltd.,(2004) 265 ITR 265 the impugned order of Tribunal is erroneous in law and gives rise to substantial question of law. He has also fairly invited attention to an order made by this Court on

12/09/2005 in Tax Appeal No.2 of 2005 in the case of The Jt. CIT (Asstt.) Vs. M/s.Panchratna Hotels Private Limited.

4 As can be seen from the impugned order of the Tribunal it has confirmed the order of CIT (Appeals). The CIT (Appeals) has relied upon decision in case of Panchratna Hotels Private Limited, whereby the Reference Application came to be rejected by High Court and Special Leave Petition against the said order also came to be rejected by the Supreme Court. The common thread running through all the decisions is that where finally assessed income was a loss and and there was no positive income, no penalty was imposable.

5 This Court has taken cognizance of the aforesaid decision in its order dated 12/09/2005 rendered in Tax Appeal No.2 of 2005 in the aforesaid case of Panchratna Hotels Private Limited for subsequent assessment year.

6 In the aforesaid circumstances, in absence of any question of law, there is no question of substantial question of law arising from the impugned order of Tribunal. The appeal is accordingly dismissed.

Sd/- Sd/-

(D.A.Mehta, J) (H.N.evani,J)

m.m.bhatt